



Generally Speaking

COMINGS and GOINGS

Please Welcome

Dave Seng, Data Processing Manager, to the Juneau Administrative Services Division. Dave replaces **Drew McDougal**, who is leaving after 12 years with the department. A going away lunch was held for him on June 27. Drew and his wife are planning to relocate to Bellingham, Washington. Best wishes to the McDougals, and a warm welcome to Dave.

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In a switch, the Bethel DAO said goodbye to **DA Lance Joanis**, and welcomed newly appointed **DA Andrew Grannik**. Lance moved to Anchorage with his family and is supervising the Property and Fraud Crimes Unit in the Anchorage DAO. **DA Grannik** transferred to the offices from the Anchorage DAO.

Welcome to **Cheryl Tredway, LOA I**, to the Anchorage Commercial and Fair Business Section.

John Erickson, has joined the Anchorage Opinions, Appeals and Ethics Section as one of the AAGs handling Indian law matters.

The Anchorage Oil, Gas and Mining section is pleased **Ide Sy-Lumba** returned to the department and is an **LOA I** in their section. Ide previously worked in the Child Protection Section.

Effective June 1, **AAG Tim Twomey**, Anchorage Human Services, moved from working on third-party subrogation and recovery matters to a recently created position within the section, dedicated full-time to the Alaska Psychiatric Institute. On June 16 **AAG Laura Derry** joined the section's staff to work the third party subrogation and recovery matters. The section also welcomed **Shelly McCormick** as a Paralegal.

University of Chicago law student **David Greisen** is interning for AG Colberg and Special Assistant Monica Jenicek for the summer.

Nicholas Cummings, a rising third year law student from Gonzaga University, is interning for the Fairbanks DAO. The office reports Mr. Cummings is doing a stellar job and is very much appreciated for all the good work he is doing for the offices.

The Anchorage DAO welcomed two law students to summer internships, **Aisha Hill** and **Kelly Ard**. DA Bachman says they have gotten a crash course in misdemeanor practice. The office also welcomed **Administrative Clerk II Grace Beaujean, LOA I Donna Carpenter**, and **ADAs Joan Wilson** (formerly

of the Transportation Section in the Civil Division) and **Josh Kindred** (formerly of private practice).

The Labor and State Affairs Section celebrated and expressed their appreciation for the state service of **Virginia (Gina) Ragle**, who retired after 25 years with the department. A barbecue was held in her honor on June 30 at Sandy Beach in Juneau. The section will greatly miss her and the department joins in wishing her the best in the future. The section will also miss **Leticia Alvarez**, who left the department on June 23 for a position in private practice as a paralegal.

Jessica Bell is interning for the Anchorage Environmental Section. Jessica is a law student at Columbia Law School.

The Anchorage Transportation section bid farewells to **AAG Gary Gantz** who retired this month and **AAG Joan Wilson** who left the section to become an ADA in the Anchorage DAO. Gary and Joan's colleagues in the transportation section will miss them both.

At the end of the month, the Anchorage Office of Special Prosecutions and Appeals said goodbye to **AAG Regan Williams**, who moved over to the Anchorage DAO to work in the violent crimes section. The offices wish him good luck as he tackles big city crime.

KUDOS

Many congratulations to **Shelly McCormick** on her promotion from **LOA II** in the Anchorage Commercial and Fair Business Section to a **Paralegal** in the Human Services Section.

Best wishes to **Stefan Estonilo** on his promotion from **LOA I** to the **LOA II** in the Anchorage Environmental and Opinions, Appeals and Ethics Sections.

Congratulations are also in order to **Laura Martinez**, promoted to **LOA II** for the Anchorage

Commercial and Fair Business and Regulatory Affairs and Public Advocacy Sections. She will also provide administrative support to Deputy Attorney General Craig Tillery.

CIVIL DIVISION

Child Protection

New CINA cases based upon allegations in the Office of Children's Services (OCS) petitions:

OCS responded to a report of harm from a hospital that a one-year-old was in critical condition after she ingested her father's oxycodone or methadone. In addition, the child tested positive for opiates and benzodiazepines. The mother was in inpatient treatment at the Alaska Psychiatric Institute. OCS assumed emergency custody.

OCS assumed emergency custody of a newborn who tested positive for opiates. The mother used heroin during the entire pregnancy and the child will likely have severe physical and mental delays and require on-going treatment. The father is also drug addicted. The parents agreed that the child would not be safe with them.

OCS assumed emergency custody of two children after their mother was found to have been using drugs and alcohol. She had been released from prison five days earlier. One of the children had a severe facial infection from an alleged fall that had not been treated in a number of days. The family has an extensive history with OCS. Prior to the mother's incarceration, OCS had worked with the family for three years to address drug and alcohol issues as well as mental health issues. The whereabouts of the fathers of the children are unknown.

OCS received a report from a 13-year-old girl that her father had hit her and she had fled the home. Upon further investigation, other children in the home revealed physical abuse. The mother was not a viable placement option as she had had very little contact with the children in over a year. The

mother also has other children (by another man) in the system.

OCS assumed emergency custody of a one-year-old when it was determined the mother would not or could not care for him. The mother has mental health and developmental issues. The department, along with local service providers, had been working with her to prevent removal, but the mother did not follow the treatment plan. The father's whereabouts are unknown.

Numerous other children across the state were taken into custody as a result of serious risk of harm due to their parents' substance abuse, domestic violence and/or incarceration.

Commercial and Fair Business

Administrative Law Judge Proposes Revocation

On June 26, Administrative Law Judge ("ALJ") James Stanley issued a proposed decision recommending that the State Medical Board ("Board") revoke the medical license of former Anchorage physician Gary Gerlay. The board previously suspended Gerlay's license on April 21, 2005, based on an ex parte motion filed by the Division of Corporations, Business and Professional Licensing ("Division"), finding that Gerlay was a clear and immediate danger to public health and safety under AS 08.64.331(c). The board, following an evidentiary hearing, adopted ALJ David Stebing's proposed decision on August 10, 2005, and ordered that the summary suspension of Gerlay's license would continue until a final resolution of the disciplinary matter. Specifically, the board found that Gerlay had improper sexual relationships with two female patients, committed sexual improprieties with a third patient, allowed an unlicensed employee to provide patient care, failed to meet minimum standards for the prescribing of controlled substances, and refused to submit to a board ordered evaluation.

Gerlay appealed the board's summary suspension decision to superior court on August 22, 2005. However, Gerlay never filed an opening brief and on December 1, 2006, he voluntarily dismissed his appeal of the board's summary suspension decision.

While the appeal was pending, on April 12, 2006, the division and Gerlay stipulated that there was no need for an additional evidentiary hearing; rather, the disciplinary violations established by the board in its August 10 summary suspension decision, as well as the testimony and exhibits from the summary suspension hearing, could serve as the basis for the ALJ's final proposed decision, which would impose sanctions against Gerlay's license.

Following ALJ Stebing's retirement in August 2006, the disciplinary matter was assigned to ALJ Stanley. On July 6, 2007, following briefing by the parties, ALJ Stanley issued a proposed decision recommending that the board continue the suspension of Gerlay's license for three additional years, at which time it could be reinstated at the discretion of the board. On July 19, 2007, the board rejected the proposed decision pursuant to AS 44.62.500(c), remanded the case back to the ALJ, and ordered that Gerlay undergo a full psychiatric and physical examination, the results of which would form the basis of a new proposed decision. However, Gerlay, who was now living in New Mexico, refused to be evaluated by physicians of the board's choosing. ALJ Stanley's decision recommends that, based on Gerlay's refusal to comply with a lawful order of the board, as well as a "multitude of clearly established violations", the board should revoke Gerlay's medical license. AAG Robert Auth represented the division during the disciplinary matter and the board during the superior court appeal.

Proposed Decisions on Applications Issued

Proposed decisions were issued last month in two license application cases. In one, the administrative law judge ("ALJ") recommended that the Board of Psychologists and Psychological Associate Examiners approve the license application of Wendy Arundale. The board had initially denied the application over concerns about the applicant's

educational credentials. After an administrative hearing, the ALJ concluded that the applicant's education meets the regulatory requirements. AAG Jenna Conley handled the case.

In the second case, the ALJ recommended that the Board of Public Accountancy deny an application for licensure as a CPA from Eileen Zaiser. Ms. Zaiser had formerly been licensed as a CPA in Alaska, but her license lapsed at the end of 2001. She was under a great deal of stress due to personal circumstances, and did not seek to reinstate her license during the five-year period allowed. Unfortunately, Ms. Zaiser continued to hold herself out as a licensed CPA, including on her business letterhead, in the telephone directory, and while signing tax returns prepared for her clients.

The Division of Corporations, Business, and Professional Licensing issued a cease and desist order in January of 2008 directing Ms. Zaiser to stop holding herself out as a CPA. She did not contest the cease and desist order, but did not change her practice. When she applied for a new CPA license, the board denied her application because she had illegally held herself out to be a licensed CPA for seven years. The ALJ agreed that this conduct was sufficient grounds for the board's denial of Ms. Zaiser's license application. AAG Gayle Horetski represented the division in the case.

Superior Court Grants Summary Judgment

Maryjane Hinman, licensed as a registered nurse in Alaska (and represented by the ACLU), filed a civil suit against the State of Alaska, Department of Commerce, Community & Economic Development, Division of Corporations, Business and Professional Licensing, objecting to the division's practice of displaying an occupational license holder's "address of record" on the results screen following an on-line search of the division's licensee data base. Ms. Hinman contended that the division violated her right to privacy, as Hinman uses her residence address as her address of record. (Licensees may use any address they chose as their

address of record, including a post office box). Judge Sharon Gleason recently granted a motion for summary judgment in favor of the state and dismissed the case. She ruled that the holder of a professional license issued by the state does not have a reasonable expectation of privacy in the address the licensee supplied to the state for official purposes (including the service of accusations or civil complaints). AAG Gayle Horetski defended the state in the case.

RCA Defends Order Denying Intervention

The Alaska Exchange Carriers Association (the "Association") sought to intervene in a matter before the Regulatory Commission of Alaska (RCA) involving Interior Telephone Company on the one hand and AT&T and GCI on the other. Interior had asked the RCA to authorize it to move its "first point of switching" from Cooper Landing to Seward. Local exchange telephone companies like Interior interconnect their networks with long distance telephone companies at a point known as the "first point of switching." AT&T and GCI opposed Interior's Petition.

The association administers a "tariff" that contains various provisions whereby local companies and long distance companies may privately resolve a disagreement over a change in a first point of switching. Under the tariff, when such disputes cannot be privately resolved, they are submitted to the RCA for adjudication. The association claimed that it should be allowed to intervene in the dispute before the RCA between Interior and AT&T/GCI because its tariff was at issue and because RCA statutes and regulations authorized it. AT&T and GCI opposed the association's motion to intervene. The RCA agreed with AT&T and GCI and declined to let the Association into its proceeding. The RCA later ruled that Interior should not be permitted to move the first point of switching from Cooper Landing to Seward. The association appealed the RCA's order denying intervention to the superior court and lost.

On appeal to the Alaska Supreme Court, the association contends that it had a statutory right to intervene on appeal because its tariff was allegedly

at issue in front of the RCA. The RCA challenged the association on both assertions. First, since the association cannot identify any statute that explicitly authorizes its intervention, the RCA contends that the association has no statutory right to intervene. Second, since the RCA was able to resolve the dispute between Interior Telephone and AT&T/GCI without resort to the association's tariff, the RCA contends that the tariff was not at issue. Lastly, the RCA claims that if any error had been committed, that error was harmless, because the association has not been able to demonstrate how it has been prejudiced. Oral argument was held before the Alaska Supreme Court on June 17, 2008. AAG Robert Stoller is representing the RCA in this matter.

Environmental

Pribilof Islands

The State of Alaska and the National Oceanic and Atmospheric Administration (NOAA) entered into the Pribilof Islands Environmental Restoration Agreement in January 1996 in order to investigate and remediate contamination on St. Paul and St. George Islands. NOAA and the Department of Environmental Conservation (DEC) had identified a total of 60 sites at St. Paul Island that needed investigation and corrective action. Since the identification of these sites, NOAA has performed activities such as removing drums and debris, removing underground storage tanks (USTs) and above ground storage tanks (ASTs), removing fuel pipelines, removing contaminated soil, closing solid waste sites, and characterizing and monitoring groundwater. In early June, DEC signed off on the completion of corrective action for St. Paul Island.

Cascadia Wildlands Project

Cascadia Wildlands Project challenged the renewal of the Oil Spill Contingency Plan for the Trans Alaska Pipeline. On June 9-12, Administrative Law Judge Terry Thurbon held a four day hearing in this administrative appeal of

the decision by Department of Environmental Conservation's Division of Spill Response and Prevention approving the renewal. Post hearing briefing is due on July 21, 2008.

Prince William Sound Tanker Contingency Plans

The section assisted the director of the Division of Spill Prevention Response in an informal review of the division's 2007 approval of the renewals of the Prince William Sound Tanker Oil Discharge Prevention and Contingency Plans. The request for informal review was made by Tom Lakosh. The director upheld the division's decision to approve the renewals. Mr. Lakosh has now requested that the commissioner of the Department of Environmental Conservation conduct a formal administrative adjudication of 2007 contingency plan renewals.

Southeast Alaska Conservation Council v. U.S. Army Corps of Engineers.

The U.S. Supreme Court granted the state's and Coeur's petitions for certiorari. The Court will now review the Ninth Circuit Court's decision that invalidated a Corps of Engineers' permit for mine tailings disposal at the Kensington Mine near Juneau. The case is important for other mine projects in Alaska that need to procure federal and state permits for disposal of tailings.

Village of Point Hope, et al. v. Minerals

Management Service, et al. The state intervened as a defendant in this federal case involving the 2008 seismic surveys in the Chukchi and Beaufort Seas. Plaintiffs sought an injunction to prevent the surveys arguing that the federal authorizations violated the National Environmental Protection Act and the Marine Mammal Protection Act. The federal defendants and intervenors persuaded Judge Beistline to deny the request for injunctive relief and dismiss the case on the merits. The case is now on appeal to the Ninth Circuit.

Human Services

Litigation Update

Curyung. The team (AAGs Carla Raymond, Jonathan Clement and Section Chief Stacie Kraly) attended a settlement conference for two and one-half days. A conceptual settlement was agreed upon at that time and the team is now working on the settlement agreement.

Paul Fuhs, et al. v. Joel Gilbertson, et al. Last month the Alaska Supreme Court ruled in a long-standing matter that Paul Fuhs did not have standing to challenge a Certificate of Need, which was granted to Providence Hospital. The case centered around statutory standing requirements that required someone to be “substantially and adversely affected” in order to seek injunctive relief under the Certificate of Need statutes. The court ruled that Mr. Fuhs did not meet that heightened standing requirement, affirming Judge Gleason’s order dismissing the complaint.

In the Matter of South Anchorage Ambulatory Surgery Center. Section Chief Stacie Kraly argued in superior court an appeal of an administrative decision denying an application by a joint venture to open a surgery center in South Anchorage. The argument went well, but no decision has been issued.

In the Matter of Fairbanks Surgery Center. In this matter, the administrative law judge approved two surgery suites for Kobuk Ventures in Fairbanks last fall. A party to the underlying action and a competitor of Kobuk Ventures, Advanced Medical, filed an appeal in Anchorage, which they dismissed last month. Another appeal filed in Fairbanks by Fairbanks Memorial Hospital is still pending.

Vivian Maud v. Department of Health and Social Services, Division of Public Assistance. AAG Libby Bakalar settled this case last month, agreeing to correct an erroneous decision related to food stamp benefits, amending current notices

to reflect the agency decision, and finally to issue a program instruction bulletin to all eligibility tech works to avoid a similar issue in the future.

Labor and State Affairs

Alaska Industrial Development and Export Authority

Judge Downes set June 1, 2009, as the date for trial in the longstanding dispute between the Alaska Industrial Development and Export Authority and Golden Valley Electric Association over the operation and control of the Healy Clean Coal facility. AAG Brian Bjorkquist is handling this matter along with outside counsel.

Elections

Council of Alaska Producers v. Sean Parnell. On June 16, the Alaska Supreme Court heard argument in an appeal from the decision to certify an initiative petition (07WTR3). At the superior court level, Judge Blankenship had agreed with the Lieutenant Governor that the proposed initiative was permissible regulation, rejecting arguments that the initiative was an appropriation, a taking, special legislation, or preempted. The appeal of a similar initiative petition, 07WATR, was dismissed by the Alaska Supreme Court after the sponsor withdrew it. AAG Mike Barnhill represents the Lieutenant Governor in these matters.

Shulz v. New York. This action was filed for an order requiring all states to hand-count election ballots during the 2008 election cycle. The federal court for the eastern district of New York dismissed the case against all non-New York defendants, including Alaska, on grounds of lack of personal jurisdiction and sovereign immunity. AAG Mike Barnhill has been watching over Alaska’s interests in this matter.

Croft v. Parnell. Judge Rindner held oral argument on June 6 in this appeal from the Lieutenant Governor’s decision that an initiative petition, 07COGA, violated the single subject rule. This initiative proposed a law to publicly fund election campaigns and to tax oil production as a way to

pay for the program. Judge Rindner requested additional briefing on the extent to which similar funding mechanisms exist in state law and took the matter under advisement. AAG Mike Barnhill is representing the Lieutenant Governor.

Labor Relations

Alaska Correctional Officers Association v. State.

On June 16, in an appeal before Judge Suddock by the Alaska Correctional Officers Association (ACOA), AAG Bill Milks defended the decision of the Alaska Labor Relations Agency that retirement benefits are set by statute and not negotiable in collective bargaining.

Hunsick v. Alaska State Employees Association.

This month the National Right to Work organization filed an action in federal district court against state officials and the union representing a unit of state employees on behalf of a state employee facing dismissal as provided in the collective bargaining agreement. The union security clause in the agreement requires the dismissal of an employee upon a request by the union when the employee is not paying the required dues or agency fees. The matter settled within several days. AAG Bill Milks represented the state officials.

Retirement and Benefits

The Office of Administrative Hearings issued a final order on May 22 in a case concerning a retirement system member who failed to select long term care for a spouse at retirement. Some information was provided in the space for selecting this benefit but the box was not checked as required to select the benefit. The administrative law judge concluded that the form was ambiguous and allowed the member the benefit, reversing the decision of the benefits administrator. AAG Toby Steinberger handled this matter.

Legislation and Regulations

During June, the section spent a busy month providing legal assistance for the third special session, which began June 3.

The section also edited and legally approved for filing the following regulations projects. 1. State Board of Registration for Architects, Engineers, and Land Surveyors (examinations, education requirement, and continuing education; registration by comity); 2. State Medical Board (licensure, independent medical examiners, and applications); 3. Board of Professional Counselors (approved supervision requirement, code of ethics); 4. Division of Insurance (annuity contracts, miscellaneous insurance matters); 5. Alaska Commission on Postsecondary Education (student loans, teacher education loans, fees, WWAMI medical education program); 6. Department of Commerce, Community, and Economic Development (money services); 7. Department of Health and Social Services (payment under Medicaid for transportation and accommodation services); 8. State Board of Education and Early Development (school and district accountability, other academic indicators, subgroups, and performance incentives); 9. Department of Environmental Conservation (air quality).

Additionally, the section gave legal advice on several emergency regulations projects and is preparing for its annual regulations training classes in late August 2008.

Natural Resources

Tier II Moose Hunts

On June 5, the superior court entered a summary judgment order in the lawsuit brought by the Ahtna Tene Nene' Subsistence Committee and a number of other plaintiffs challenging the Board of Game's ("Board") scoring regulations for Unit 13 Tier II hunts. The judge granted the state summary judgment on the validity of the board's prohibition against hunting moose or caribou in other areas if an applicant draws a permit to hunt in Unit 13.

Then, he said that deciding to give the same score on the income question for households of 1, 2, 3 or 4 persons is within the board's purview, and granted the state summary judgment on that.

However, he said if income is going to be a factor, it must be adjusted for cost of living, and granted Ahtna, et al., summary judgment on that argument. He ruled that the board's decision to use income as a complete proxy for the ability to obtain food score at a certain income level was valid, and granted the state summary judgment on that issue. However, he said that the board cannot use one criterion (ability to obtain food) to zero out the other (customary and direct dependence) or vice-versa, and granted Ahtna, et al., summary judgment on that issue. He remanded the moose hunting regulatory regime to the board to adopt regulations that clearly provide a preference for subsistence uses if the fall hunt is going to be a general hunt, and said the board should look at current data to determine if its finding on the amount necessary for subsistence uses should be changed or stay the same in doing so.

The board is scheduled to meet in emergency session on July 2 to address the ruling so that the upcoming hunting seasons, which begin on August 15, will not be delayed or interrupted. AAG Kevin Saxby represents the state in this case.

Akiachak, et al., v. Department of the Interior, et al. Plaintiffs in this case filed suit in U.S. District Court for the District of Columbia challenging a federal regulation that prohibits the Secretary of Interior from taking land into trust in Alaska for Alaska tribes or individual Natives. The state's motion to intervene has been ripe for decision since December 2007, but the judge has not ruled on it. The state also moved to stay proceedings pending a decision on the intervention motion; but the judge has not ruled on that motion either.

Meanwhile, discovery proceeded, the administrative record was filed, and summary

judgment briefing is underway. On June 13, AAG Anne Nelson filed a motion for leave to file a cross motion for summary judgment and opposition to plaintiffs' motion for summary judgment with the state's cross motion and opposition as Exhibit A. The state argues that the Alaska Native Claims Settlement Act prohibits the creation of trust land in Alaska. The state also attempted to appeal the *de facto* denial of the motion to intervene, but the court refused to accept the appeal because there was no order to appeal. AAG Nelson then filed a motion requesting that the court rule on the motion to intervene or for expedited consideration of that motion.

Parks Highway Fire Litigation

A trial date will be set on June 30 for the case over damages resulting from the summer of 2006 Parks Highway fire. Thaddeus Kolwicz, or a member of his family, is alleged to have negligently started the fire in June, 2006 that burned approximately 130,000 acres near Nenana. The state sued Mr. Kolwicz to recover the costs it incurred in suppressing the fire. Mr. Kolwicz filed an action in interpleader, where he put the policy limits of his homeowners liability insurance on deposit with the court and brought into the action other property owners who lost property or suffered damages because of the fire. The other parties include homeowners and Toghotthele Corporation, which claims commercial timber damages as well as damages for lost cultural and subsistence value of the land.

A settlement conference was held in September, 2007, but the parties failed to reach an agreement on how the money on deposit with the court should be distributed. The judge in the case held a status conference on June 3 during which he scheduled another hearing on June 30 to set a trial date. The state has filed a motion for summary judgment asking the judge to order that the insurance proceeds be distributed on a pro rata basis in accordance with the damages proven by each party. Toghotthele and one of the homeowners are expected to contest this method of distributing the insurance proceeds.

Oil, Gas, and Mining

State Assessment Review Board (SARB)

Last month AAGs Ken Diemer and Steve DeVries represented the Department of Revenue, Tax Division in hearings before the State Assessment Review Board (SARB) in two oil and gas property tax matters. At issue was whether the State Oil and Gas Property Assessor (“Assessor”) properly valued the North Star Wells/North Star Oil Production facility and the Trans Alaska Pipeline System (TAPS).

Both the owners of the TAPS (BP Exploration Alaska, ExxonMobil, ConocoPhillips, Unocal and Koch), and the North Slope Borough, Fairbanks North Star Borough and City of Valdez (municipalities) appealed the \$7.1 billion assessment of the TAPS to the SARB. The owners asserted that the “full and true” value of the TAPS was no more than \$850 million; the municipalities asserted that the value was approximately \$10.2 billion. The hearing was conducted over three 12-hour days, during which many witnesses were questioned by counsel for each of the parties and by the SARB members.

On May 30, the SARB issued its Certificate of Determination that the “full and true” value of the TAPS for property tax year 2008 is \$6.1 billion. Although the SARB adjusted the assessed value, it concluded that “the division made a careful, good faith effort, based on reasonable assumptions and using accepted methodology, to obtain its 2008 estimate.” Consequently, the owners owe approximately \$123 million in property taxes; of that amount, the state will receive approximately \$58.7 million; the remainder will be allocated among the municipalities and unincorporated boroughs.

Alaska Gasline Inducement Act (AGIA)

The section continues to work closely with the administration on legislative approval of the Department of Revenue and Department of Natural Resources commissioners’ proposed AGIA license for the TransCanada Alaska LLC and

Foothills Pipe Lines Ltd. natural gas pipeline project. The section has advised the administration on the AGIA license approval legislation, the proposed license, and responses to a myriad of questions that have arisen during the legislative hearings. The section will continue to provide advice during the current legislative special session and the next special session, which is expected to convene in Juneau on July 9.

Opinions, Appeals and Ethics

Ethics

The section reports AAG Judy Bockmon addressed a variety of informal ethics inquiries by email and phone. She analyzed possible amendments to the Ethics Act and regulations, and collected and provided advice about the annual outside employment disclosures for Department of Law employees. She also reviewed the draft revised Rules of Professional Responsibility and Comments and coordinated comments to the Alaska Supreme Court. She presented ethics training to the Board of Certified Real Estate Appraisers on June 6, and addressed three requests for conflict waivers.

Appeals/Litigation

Office of Public Advocacy v. Alaska Court System.

AAG Megan Webb filed an appellant’s brief in this case. The case arose out of a child custody case in which the parents disagreed about who should have legal and physical custody of their daughter and what the visitation plan should be. Although both parents initially appeared pro se, the father later retained private counsel. The mother, who had limited financial resources, attempted to obtain representation through Alaska Legal Services Corporation. After Legal Services declined to represent her, the mother asked the trial court to appoint counsel for her under the Alaska Constitution’s due process clause. After considering the arguments of the parties, as well as an amicus brief, the trial court concluded that the mother had a due process right to counsel and ordered the Alaska Court System to provide her with counsel. The court also concluded that the Office of Public

Advocacy's (OPA) enabling act, AS 44.21.410, violates Alaska's equal protection clause.

After receiving the order to provide counsel, the court system intervened and asked the trial court to reconsider its order or, in the alternative, to shift the obligation of providing counsel to OPA. OPA then intervened, and the trial court considered the arguments of the parties, the interveners, and an amicus brief before granting the court system's request to shift the financial responsibility of providing counsel for the mother to OPA, based on a statutory analysis. The court also reaffirmed that the mother had a due process right to counsel and that OPA's enabling act was unconstitutional.

In its appeal, OPA does not challenge the original determination that the mother was entitled to court-appointed counsel under the due process clause; OPA does challenge the trial court's conclusion that OPA's enabling act is unconstitutional, as well as the trial court's determination that it obligates OPA to provide counsel under the circumstances of this case. It is OPA's position that under relevant case law and the Administrative Rules, the court system is responsible for providing counsel under the circumstances of this particular case.

Mahle v. Municipality of Anchorage. AAG Megan Webb filed an appellees' brief in the Ninth Circuit Court of Appeals on behalf of the state and two former assistant district attorneys. The case arose out of the arrest of Gerald Mahle in 2000 for possession of drug paraphernalia and weapons, which were discovered when police searched Mr. Mahle's residence pursuant to four separate search warrants. After Mr. Mahle was convicted of eight criminal charges and while awaiting sentencing, Mr. Mahle sought reversal of the charges, arguing that the search warrants were illegally obtained. He relied on *State v. Crocker*, a 2004 opinion in which the Alaska Court of Appeals held that, under state law, a search warrant should not be issued for a person's home unless the warrant application establishes probable cause to believe the

person's possession of marijuana exceeds the scope of possession protected by the Alaska constitution (*i.e.*, possession by an adult of less than four ounces of marijuana in the home for personal use).

The criminal court found that this case law would be given retroactive effect and concluded that the police did not have probable cause under Alaska's unique constitutional protections regarding marijuana possession to search Mr. Mahle's mobile home and granted both the motion to suppress and motion to dismiss. It set aside Mr. Mahle's convictions on July 28, 2006.

Mr. Mahle then initiated a lawsuit in federal district court against the Municipality of Anchorage, the state, and thirty John Does, alleging that his civil rights had been violated based on the improper search of his residence, forming the basis for a § 1983 and a § 1985 claim, and that the defendants had engaged in tortious activity, giving rise to claims for false arrest, false imprisonment, negligent and intentional infliction of emotional distress, libel, and slander. Mr. Mahle later amended his complaint to include two police officers and two assistant district attorneys. He sought in excess of \$300,000 for a debt incurred to the Internal Revenue Service, over \$1,000,000 in compensatory damages, and the contents of his safe, which had been seized pursuant to the search warrants.

The trial court ultimately dismissed the action in its entirety, concluding that (1) the state was not subject to suit under either § 1983 or § 1985, (2) the court lacked jurisdiction in relation to the state common law claims against the state, (3) the § 1983 claims against the individual defendants were not cognizable or, in the alternative, these individuals were entitled to absolute and/or qualified immunity, and (4) under § 1985, Mr. Mahle failed to allege a claim for which relief may be granted against the individual defendants. Having dismissed all of the federal claims (including those against the Municipality and police officers), the trial court also dismissed the state common law claims, declining to exercise supplemental jurisdiction. Mr. Mahle appealed to the Ninth Circuit. Oral argument is currently scheduled for August 2008.

Wilson W. v. State, Office of Children's Services (Docket No. S-12828). The Alaska Supreme Court issued an opinion on June 13 affirming an order adjudicating four children as children in need of aid. The Office of Children's Services (OCS) removed four children from their parents' care based on concerns of domestic violence and physical abuse. After removal, the father repeatedly threatened to kill the social worker assigned to the case and adamantly refused to participate in any rehabilitative services. As a result, OCS prepared a case plan for the parents without their input. It also referred the parents to a number of services, arranged for supervised visits with the children, provided a gas voucher to help with travel expenses, and the social worker set aside an hour every week to speak with the parents telephonically about the case.

The Alaska Supreme Court found that OCS was excused from making active efforts after the father refused to cooperate with OCS, proved unwilling to even speak with social workers, disobeyed OCS's instructions regarding visitation, and repeatedly threatened the social workers. The Court rejected the father's argument that OCS should have sought a court order requiring him to participate in certain services, noting that "requiring OCS to seek court orders for every uncooperative parent would put a huge and pointless burden on the department and the court system." The Court went on to conclude that, despite the father's refusal to cooperate, OCS did make active efforts to reunify the family. AAG Megan Webb handled the appeal, and former AAG Curtis Martin handled the adjudication hearing below.

Hinkle v. State, Department of Environmental Conservation. The owners of contaminated commercial property along the Kenai River decided to dismiss their appeal challenging the validity of a consent decree that resolved their liability for the state's costs of cleaning up the contamination. After briefing to the Alaska Supreme Court was complete, and the day before oral argument was to take place, Gary and Judith Hinkle notified the Court that they waived oral argument. The following day, they

moved to dismiss their appeal. The appeal concerned the Hinkles' claim that the Court should set aside the consent decree that the Hinkles and the state agreed to in 2000. Because they dismissed their appeal, the consent decree remains in effect, and the Hinkles remain obligated to pay the state \$1.3 million, with interest, by September 2010. AAG Dave Jones handled this appeal.

Regulatory Affairs and Public Advocacy **(RAPA)**

Pre-Filed Testimonies

U-07-116/U-07-161, CVTC competitive entry rate modification. Copper Valley Telephone Cooperative (CVTC) filed a petition for competitive entry rate modification because of anticipated local service competition from GCI within certain parts of its service area, initially in Valdez. The utility seeks pre-approval of future rate increase ceilings in noncompetitive parts of its service area (to offset anticipated price decreases in competitive areas) that would exceed 200 percent for remote exchanges outside of Valdez and Glennallen.

On June 13, the Attorney General/RAPA pre-filed the direct testimony of its contract expert witness, Ben Johnson Associates. That testimony addressed the balance required in transitioning toward a selective competitive market without damaging universal service. The testimony contends that the utility's short-run incremental cost study methodology does not accurately present the utility's costs going forward and that its projections of losses due to competition are too speculative. Attorney General testimony argued that the utility should decrease costs in the face of competition and address ways to stimulate demand. Further, the utility's proposal raises concerns of rate shock in the noncompetitive areas.

The Attorney General/RAPA recommends that the commission take a gradualist approach and limit rate increases in the exchanges outside Valdez to no more than 10 percent per year until there is some evidence of how competition unfolds and with what

impacts. An adjudicatory hearing is scheduled for September 8-10, 2008. AAG Glenn Gustafson is litigation counsel.

U-08-58, Enstar gas contracts. On April 14, 2008, Enstar Natural Gas Co. (Enstar) filed two proposed gas supply agreements (GSAs) for natural gas supply from 2009-2013 to meet its unmet needs: one with Marathon Oil Co. for 25.6 Bcf, and one with ConocoPhillips for 12 Bcf. The filing involves matters of first impression because the GSA proposals involve multiple providers of gas, short-term contracts, and novel tiered-pricing based upon an unapproved market basket floor index to value different levels of gas deliverability. Enstar's gas costs are passed through directly to consumers. Responsive to RCA request, the Attorney General/RAPA filed its election to participate in the case on May 21, 2008 and contracted for expert witness services.

On June 24, RAPA pre-filed the direct testimony of its expert witness, economist Cristina Klein. That testimony concludes that the pricing terms of both GSAs are not reasonable, and that numerous other terms and provisions (including absence of price caps, inclusion of production taxes and take-or-pay type penalties, and gas storage pricing terms) are also unreasonable. RAPA testimony recommends that the commission fully examine gas-storage related issues in a separate docket. Further, that if these GSAs were approved, the unsupported tier-related features should expressly not be deemed precedent for future GSAs; and that Enstar should not be allowed to pass through to its ratepayers certain costs related to take-or-pay fees, or costs for new production taxes. An adjudicatory hearing is scheduled to begin on July 28. AAG Steve DeVries is litigation counsel.

Stipulated Settlements

U-07-112, Bethel electric. Bethel Utilities Corporation (BUC) filed for a 9.8 percent across the board rate increase for electrical service on July 25, 2007. The Attorney General/RAPA filed comments recommending that

the commission suspend the filing for further investigation and elected to participate in the proceeding on October 10, 2007. The commission granted the rate increase on an interim, refundable basis pending the outcome of the case. Both parties pre-filed their respective direct testimonies. The testimony of Attorney General/RAPA witness Parker J. Nation, Jr. challenged various aspects of the utility's proposed operating expenses and the proposed overall rate of return on rate base.

Prior to hearing, the parties reached a settlement of outstanding issues in the case, including manager compensation, prepaid expenses, and cost of debt. The commission accepted the settlement agreement on June 2. The settlement achieved a 6 percent reduction to the utility's proposed rate increase and, therefore, will result in refunds to consumers for the higher amount in rates collected during the interim period.

U-07-141, Beluga pipeline. On September 4, 2007, Beluga Pipeline Company (BPL) filed a tariff revision proposing to increase its current, interim/refundable rate for natural gas service in the Cook Inlet from \$0.25 per mcf to \$0.317 per mcf, except for shipments under special contract with Aurora Gas. BPL, a 16 mile regulated pipeline from Granite point to Beluga Point, is owned by Marathon Oil Company. The current, refundable shipping rate has been in effect since inception in 2005 and was to remain in effect until the outcome of the instant case, per the RCA's prior acceptance of a stipulated settlement to that effect in docket U-04-81(16).

The Attorney General/RAPA elected to participate in the proceeding on October 9, 2007 and pre-filed the direct testimony of its staff witness, Parker J. Nation, Jr., on May 30, 2008. That testimony proposed that the permanent postage stamp rate remain at \$0.25 per mcf, and recommended that the Aurora contract rate remain in effect for its term.

Mediation was held the week of June 2 which yielded a settlement resulting in a rate that mirrors the cost-based rate proposed by RAPA in its pre-filed testimony. Consequently, the scheduled

hearing date has been vacated at this time. The settlement provides for a maximum rate of \$0.2544 per mcf with authority for BPL to offer discounts to shippers at rates below that, and preserves the Aurora special contract rate. In short, as a result of the proposed settlement, there would be no rate increase (no rate change at all) and no refunds will be due. The settlement was executed by the parties on June 23 and will be presented to the commission for its approval.

New Cases

U-08-63, Potter Creek Water Co. On April 2, 2008, Potter Creek Water Company (Potter Creek) filed to increase rates by 121 percent for water service to its (approximately 120) customers in Anchorage. Potter Creek filed for the increase after its anticipated sale of the utility did not occur. The commission granted an adjusted interim/refundable rate, granted the Homeowners' Association intervention request, and invited attorney general participation in the case. The RCA order also indicated without explanation, that it would "not require interest to be paid on any future refunds".

On June 5, the Attorney General/RAPA filed notice of its intent to participate in the proceeding to address standard ratemaking elements. On June 13, RAPA also filed a petition for reconsideration or clarification which questioned the RCA declaration, absent findings, that no interest would be assessed on any future refunds due ratepayers as a result of over collection. Citing RCA precedent, the petition maintains that the commission should vacate the no-interest assertion or supplement its order with discussion and findings reconciling its own precedent on the question of prospective refunds. A procedural schedule has not yet been set in the docket. AAG Sam Cason is litigation counsel.

U-08-61, Fairbanks Natural Gas. On June 6, responsive to a letter request from certain members of the Alaska State Legislature, the RCA opened a docket on its own motion to

investigate Fairbanks Natural Gas, LLC's (FNG) exemption from rate regulation. The commission previously concluded in docket U-06-107 (March 22, 2007) that continued economic deregulation of FNG was in the public interest under AS 42.05.711(d). Various legislators, including Rep. Jay Ramras of Fairbanks, alleged that the Fairbanks gas market has matured to the point that the commission should remove the exemption. They allege unjustified gas price increases, cost-prohibitive fuel switching (with fuel oil), and FNG profitability such that a competitive market does not exist to justify the exemption from regulatory oversight of retail gas pricing.

Responsive to commission request, on June 20, the Attorney General/RAPA filed an election to participate in the case to the extent that the RCA conducts an investigation of the exemption from rate regulation that the commission previously granted to FNG. A procedural schedule has not yet been scheduled in the proceeding. AAG Sam Cason is litigation counsel.

Torts and Workers' Compensation

In a medical malpractice action filed against the Department of Corrections and staff by a *pro se* inmate, the Fairbanks Superior Court granted the defendants' motion for summary judgment and dismissed the action in its entirety. Plaintiff Haynes alleged that he should have received x-rays or an MRI after slipping and falling at the jail, and that he should have been seen by outside medical providers for a second or third opinion. In support of their summary judgment motion, the defendants submitted an extensive expert affidavit that established that the standard of care for providing medical care to the plaintiff had not been breached.

In an attempt to counter the defendants' expert affidavit, the plaintiff offered the affidavit of another inmate who was a former physician in Fairbanks. The no longer licensed physician was convicted of sexually assaulting patients, issuing prescriptions that had no medical purpose, and stealing Medicaid funds. He lost his license to practice medicine as

a result of his convictions and subsequent incarceration. Superior Court Judge Robert Downes determined that the inmate “expert” did not possess the requisite statutorily required credentials to be an expert witness on the standard of care. Without a qualifying expert report, plaintiff Haynes was unable to refute the defendants’ expert report and summary judgment was granted to the defendants. The matter was defended by AAG Gene Gustafson.

Transportation

Landowner’s Advertising Sign Permit

A landowner sought a permit for an advertising sign in the state highway right-of-way in front of the landowner’s business. An administrative review panel within the Department of Transportation and Public Facilities (DOT&PF) affirmed a prior administrative determination that the landowner could not maintain the sign, in part because maintaining the sign in the right-of-way was inconsistent with federal highway funding requirements. AAG Susan Urig represented DOT&PF in the hearing before the administrative review panel.

Emergency Regulations Filed

The Department of Transportation and Public Facilities (DOT&PF) promulgated emergency regulations temporarily waiving a recent increase to rents at rural airports. DOT&PF also granted a portion of the petition, filed under the Administrative Procedures Act by the Alaska Air Carriers Association, seeking permanent amendment to the regulations setting rents at rural airports. DOT&PF plans to hold hearings on the question of a permanent amendment. AAGs Deborah Behr, Jim Cantor, Kevin Messing, Jeff Stark and Steve Weaver along with outside counsel Virginia Rusch, all assisted DOT&PF.

Citizens’ Right to Access Beach

A Nikiski ship-loading company closed an access road to a popular Cook Inlet beach, claiming it

owned the road and that federal security requirements mandated closure. The Department of Transportation and Public Facilities filed a complaint to establish that the state owns the access road.

Thomas H. Alaska Supreme Court Case

The Alaska Supreme Court issued a favorable decision denying a father’s parental rights in a case Section Chief Jim Cantor handled for the Child Protection and Opinions, Ethics & Appeals Sections.

CRIMINAL DIVISION

Anchorage DAO

The Anchorage offices conducted nine trials and 47 grand juries this month.

In a sentencing of note, ADA Dan Shorey persuaded Judge Phillip Volland to impose a very lengthy sentence on attempted murderer Johnny Johnson, a 24-year-old man with one prior adult felony conviction. Johnson slashed three older men who had invited him to their home to drink. Johnson had just been paroled by the state of Oklahoma for a violent crime. Judge Volland imposed 77 years with 15 suspended.

ADAs Gustaf Olson and Sharon Marshall tried Leng Moua for the domestic violence homicide of his wife. Moua stabbed his wife in front of their children because she had called him a “dog without a home.” The primary issue was “heat of passion” based on the insult being a particularly serious insult in the defendant’s Hmong culture.

ADA Alan Goodwin tried Roger McKinley for the 2002 stabbing death of Cindy Henry. Henry’s stabbed, beaten and sexually assaulted body was found under a downtown bridge. The primary piece of evidence was a palm print in Henry’s blood. The defense contended that the palm print was unreliable. During his closing ADA Goodwin focused on the position of the print on the base of the bottle. An exemplar went back to the jury and that was all they needed to convict on all counts.

ADA Alison Collins came in from Palmer to complete her murder two prosecution of David Prince, a recent graduate from Wellness Court. Sadly, Mr. Prince did not follow the program and got drunk and high on cocaine then drove wildly through Anchorage until he slammed into the rear of a car, killing the rear seat passenger, an out of state visitor from North Carolina.

ADA Rob Corbisier went to Dillingham to try Brent Armstrong for stealing and destroying an enormous safe that contained several thousands of dollars.

ADA Aaron Sperbeck tried Sam Alexie for sexually assaulting an incapacitated woman. The woman failed to appear at trial, but her testimony would have shed little light given that she had to be told by responding officers that her pants were around her ankles (to which she responded, "What did you do to me" and "Who are you" to Mr. Alexie).

ADA Paul Miovas had a similar case, but his involved three firefighters who witnessed part of the assault on a woman. The woman needed a sternum rub to rouse her from her incapacitation.

Anchorage completed its eighth murder trial this year and got word that murderer Mark Rocereta, a man who has been pending trial since 2002, died in jail. The victim's family long complained about the unfairness of a system that could drag out a case for so long. Trial almost happened last year, but the Public Defender Agency conflicted out when they finally did a conflict check. Unfortunately, that conflict existed and could have been discovered on the first day of the case as Rocereta's house-mate had been a continuing client.

Bethel DAO

ADA David Buettner secured a jury verdict of guilty in a felony assault case after a week-long trial. It was a difficult case and ADA Buettner

did a great job. The defendant was charged with assault in the second degree (intentionally causing physical injury) and two counts of assault in the third degree (recklessly placing in fear and recklessly causing physical injury) for strangling the victim, who was intoxicated and fighting with the defendant's son. The defendant came up from behind and placed a bull whip around his neck and pulled back while his son held onto the victim from the front. The jury found him guilty on two counts of assault in the third degree. He is presumptive three to five years because of a previous homicide in 1985 and felony assault in 1978.

ADA Regan Williams of the Rural Prosecution Unit traveled to Bethel and tried and secured the conviction of a child molester after a two-week long trial, despite some very unfavorable rulings by the court during the trial. ADA William's closing argument was very passionate and persuasive. It took the jury just a few hours to return a guilty verdict on one of the two counts.

Fairbanks DAO

June was a heavy grand jury month with 50 new indictments being returned including everything from kidnapping and attempted murder, manslaughter, first degree sexual assault, first degree sexual abuse of a minor, to the all-too-common felony driving under the influence cases (10 of them), a variety of common thefts, and about everything else in between.

In one of the "in-betweens" the grand jury returned an indictment on Fairbanks's first online enticement of a minor case. The grand jury indicted a 26-year-old Fairbanks man for one count of online enticement of a minor (a class C felony) and two counts of electronic distribution of indecent material to a minor. An undercover investigator with the Alaska State Troopers pretending to be a 14-year-old minor female was "chatting" with the defendant when the defendant unexpectedly turned his web cam to expose his uncovered genitals. Over the course of a couple more "chats" the defendant set up an in-person meeting with what he believed would be the

fourteen-year-old minor after instructing “her” how to properly perform oral sex. Before the meeting took place the defendant was arrested, and he remains in custody on bail of \$10,000 plus the requirement of a court-approved third party custodian. An August trial date is pending.

A 30-year-old Fairbanks man was sentenced to 35 years in jail, with 15 years suspended, and placed on probation for 20 years following his release from incarceration following his plea to attempted sexual abuse of a minor in the first degree for his abuse of his eleven-year-old niece at her home. Very good and efficient work by the Alaska State Trooper Investigator assigned to the case led to the defendant’s admissions to the criminal acts as reported by the very brave young victim. As part of his sentence the defendant was ordered to register as a sexual offender for the remainder of his life and he was additionally restricted from having any unsupervised contact with minor females for the term of his probation.

Besides indicting 10 new felony DUIs during the month, the office took five misdemeanor DWI cases to trial, winning four. The month of June also saw the jury return a guilty verdict in the first ever minor in possession case taken to trial in Fairbanks. In addition, ADA Dave Carlson, whose responsibility includes coverage of Fort Yukon, worked behind the scenes with the Fort Yukon Police Department to lobby the State Crime Lab to place a breath testing machine in Fort Yukon, which they agreed to do. This will greatly facilitate the prospect of successfully prosecuting driving under the influence case referrals from that region.

[Kenai DAO](#)

Trials

ADA Jean Seaton and summer intern Andrew Rankin got convictions on two counts of felony DUI as well as convictions on related counts of assault in the fourth degree and driving while

license suspended. There were two separate incidents of DUI. The first was when the defendant drove to his ex-wife’s house. The second occurred after he had assaulted her, and fled the scene. He then abandoned the vehicle, but later came back to it, pretending that he was the passenger all along. The DAO has had so many of these scenarios lately, they have taken to calling it the “imaginary playmate defense”. The jury did not buy it; it was a great way for intern Rankin to start his internship.

ADA Seaton also did a second trial this month, a felony eluding and assault in the third degree. It was a tough case because the defendant had fled the scene and the victim was the passenger in the car. Juries often blame the victim for putting themselves in the situation. ADA Seaton convinced the jury and they convicted on all counts.

The offices also had an assault trial in which a mother, who was highly impaired, beat her ten-year-old child with a belt, leaving welts. The husband/father of the child was supportive of the prosecution despite repeated pressure by the defense to be uncooperative. The jury, however, found her not guilty, presumably accepting the defense’s “parental discipline” argument.

In Homer a defendant was tried for possessing four bindles of cocaine in a tin of chewing tobacco. His defense was he was too stupid and too drunk to know that he had it or if he did know that he had it, he didn’t know what it was; the jury found him not guilty.

Grand Jury

The grand jury indicted 47 defendants this month, including 11 DUIs, 10 felony assaults, and 14 drug cases with a variety of drugs: a meth lab, cocaine, oxycodone, and marijuana.

Among the cases was an attempted murder in the first degree in which the defendant threatened his wife and pointed a rifle at her. She had to grab the gun by the barrel and point it away from her as it was fired. She was blown out the door of the residence by the impact and was temporarily

deafened by the blast. As the defendant walked toward her while she was lying on the ground, he still had the gun in his hand. After the victim fled to the neighbor's for safety, he then went to the motor home of an individual who was on the property and threatened him as well.

In one particularly compelling case, the parents of an eight-week-old baby were charged with assaults in the first, second, and third-degrees for injuries the baby suffered. Medical testimony proved the baby had 14 broken ribs in different stages of healing, indicating assaults at different times. She also had received brain damage as a result of having been shaken. This case took about a year to put together, including documenting the effects of the assaults as the baby continued to grow and compiling the extensive medical reports.

The grand jury revisited a defendant whom they had indicted earlier for various counts of theft by receiving. As a result of that initial investigation, troopers found additional property he had left "stored" at various people's homes. It took 14 witnesses to identify and track the various trailers, vehicles, and property spread from the Kenai to Delta, but the defendant was indicted on additional counts of theft by receiving and the cases were joined for trial.

Kodiak DAO

The DAO started out the month with the grand jury indicting two Kodiak men for burglary of a local bar after they each admitted their participation in the crime. The two entered a local restaurant and bar after hours to help themselves to more than one case of liquor. One of the men was on felony probation, adding to his troubles. The other had been indicted in two separate burglaries of the local Pizza Hut and a local construction company. The various cases have been set for trial in July.

Mid-month the grand jury indicted a Kodiak male after his significant other reported he stole \$600 from her purse. He admitted the offense.

A Kodiak man entered the local Safeway store after having been permanently trespassed from it. He picked up several food items which he began eating before heading to the separate liquor store to pick out a bottle of vodka. As he was exiting, he was apprehended by store employees for not paying for either the food or beverage. Responding police took him into custody for burglary and also tampering with physical evidence because he continued eating the remainder of the evidence of stolen food following his arrest.

A Washington man hired to work on a local fishing boat was taken into custody after attacking and stabbing the skipper and two fellow crewmen without provocation. The suspect was indicted for two counts of attempted murder and separate counts of assault in the first, second and third degrees.

An Alaskan from the mainland was indicted for being a felon in possession of a handgun. Troopers had been called to contact the male who was reportedly despondent and had been drinking for a period of time.

Mid-month, ADA Williams spent two and a half days in trial on a disorderly conduct case. After three hours, the jury acquitted the defendant. A bartender called the police when the defendant and another man had walked outside apparently preparing to fight. When a Kodiak police officer arrived, the defendant was on top of and appeared to be hitting the other man. After the defendant testified that upon exiting the bar he told the other male that he did not want to fight but the other male engaged in fighting anyway, the jury concluded that the state failed to prove beyond a reasonable doubt that the fighting had been "other than in self defense".

Kotzebue DAO

Ben Milligrock of Point Hope received a sentence of 15 years with five suspended and was placed on probation for 10 years for the second degree sexual abuse of a minor, an 11-year-old girl.

Nome DAO

Indictments were returned for Christopher Paniptchuk, second degree sexual assault of a 15-year-old girl in Shaktoolik, and Derrick Southhall, third degree assault of village police officers in Stebbins.

Palmer DAO

ADA Alison Collins did a trial in Anchorage in a case she kept after transferring to Palmer. The jury convicted David Prince of murder in the second degree, three counts of assault in the first degree and DUI. Prince drove into the back end of another vehicle that had slowed down to make a turn. Pamela Miller, who was from South Carolina and here visiting family, was killed. Her daughter, granddaughter, and a family friend were injured. The hospital disposed of the defendant's blood before it could be tested. The trial judge allowed testimony regarding Prince's participation in the Anchorage Wellness court and his treatment history before the collision.

A Palmer jury found Sven Rofkar guilty of four counts of misconduct involving a controlled substance in the fourth degree for his role in a four-pound marijuana grow. Rofkar is double-presumptive and scheduled for sentencing in August. ADA Suzanne Powell prosecuted the case.

Judge Eric Smith denied Suzette Welton's application for post-conviction relief. Welton was convicted in 2002 of murder in the first degree, murder in the second degree, attempted murder, and arson in the first degree for setting her house on fire. One of her sons died in the fire, and the other survived by jumping through a second-story window. In her latest legal effort, Welton claimed her trial attorneys and appellate attorneys were ineffective for various reasons. After an evidentiary hearing, Judge Smith ruled that Welton did not prove her

allegations. This was DA Roman Kalytiak's case.

Micah Beshaw was sentenced by Judge Eric Smith to serve 75 years on charges of kidnapping, attempted sexual assault and assault in the third degree. Beshaw was convicted in January by a Glennallen jury for pulling a cancer fundraiser cyclist into the woods and trying to rape her. Judge Smith found Beshaw to be a worst offender based on both the offense and his history (prior rape conviction). Prosecuting this case was ADA Rachel Gernat.

Judge Beverly Cutler sentenced Kimberly Dubie to serve 20 years on a manslaughter charge. Dubie caused the death of her 8-week-old daughter by leaving her in an upside-down position after Dubie passed out from drinking. The child died from positional Asphyxia. Judge Cutler found her to be a worst offender based on her history of drinking and endangering her children. The prosecutor was ADA Rachel Gernat.

Tony Katulski pled to one count of sexual abuse of a minor in the first degree for sexually abusing his stepdaughter. Glenn Prince pled to one count of attempted sexual abuse of a minor in the first degree and one count of sexual abuse of a minor in the second degree for abusing each of his two granddaughters one time. Trevor Elliot pled to sexual abuse of a minor in the second degree for having sexual relations with a 12 and 13-year-old girl. ADA Rachel Gernat handled these cases.

ADA Mike Perry did a bench trial in Valdez on a hunting residency case. Defendant Keith Thomas moved from Valdez to Michigan 10 years ago. He has a building in Valdez that he leases to the Coast Guard. The building is his primary source of income, although he also has properties in other states. After he moved to Michigan, Thomas returned to Valdez every year for a month to hunt. During these visits, he stayed at a friend's house. Despite having a home in Michigan, he claimed Valdez as his primary residence and maintained an Alaska driver's license. At trial, the defendant argued "home is where the heart is." The state argued that, for resident hunting and fishing purposes, home is where you hang your hat.

The case revolves around definitions of “domicile,” “home,” and “dwelling.” The offices are awaiting a decision by Judge Schally.

A Palmer grand jury indicted Brent Hershey on two counts of assault in the third degree for striking a highway construction worker with his vehicle. Before being hit, the construction worker was directing Hershey to stop. After hitting the worker, Hershey left, driving around paving vehicles and ruining new pavement. Hershey was involved in another incident an hour later where he repeatedly struck a vehicle in the Wasilla McDonald’s drive-thru lane. ADA Kerry Corliss handled this case.

Ernest Davis was indicted on four counts of misconduct involving a controlled substance in the fourth degree for a 390-plant marijuana grow. The estimated value of the seized marijuana is \$20,000. ADA Kerry Corliss was the prosecutor.

Over forty other people were indicted on new felony charges in June.

Office of Special Prosecutions and Appeals (OSPA)

On June 17, Terrill L. Maxwell pled guilty to a Class A misdemeanor violation of AS 46.03.710, pollution prohibited. Homer District Court Judge Margaret Murphy imposed 60 days of suspended jail time, three years probation, and ordered Maxwell to complete several painting and handyman projects at the Boys and Girls’ Club in Homer and 24 hours of community work service at the Homer Harbor.

The charges against Maxwell arose from the sandblasting of the *M/V Arctic Wolf*, a 135’ shallow draft landing ship, over Memorial Day weekend 2006. The *Arctic Wolf* is owned by Fairweather Marine, LLC. Fairweather Marine hired Maxwell and his company, Repair, Sweep and Coat, to sandblast and repaint the deck of the *Arctic Wolf*. Maxwell and his employees sandblasted the deck during low tide while the

ship was beached adjacent to Chugachik Island near the head of Kachemak Bay. The work dispersed paint and sandblast grit onto mudflats, an important clam harvesting area and part of a state critical habitat area.

Witnesses reported these activities to the Coast Guard who halted the sandblasting. Tests of grit and paint samples indicated significant levels of chromium, cobalt, copper, lead, zinc and nickel among other metals had been deposited onto the mudflats and into the waters of Kachemak Bay.

Fairweather Marine previously accepted legal responsibility for the incident and negotiated a civil settlement. Fairweather Marine agreed to pay a \$12,500 civil fine to the Alaska Department of Fish and Game, Fish and Game Fund, and to contribute \$10,000 to Cook Inlet Keeper, Inc., and \$5,000 to the Western States Project, a regional association that sponsors training programs for environmental regulators. Fairweather Marine also agreed to the imposition of a \$50,000 suspended civil fine and to reimburse the Alaska Department of Environmental Conservation (ADEC) and Alaska Department of Fish and Game (ADFG) for the costs these agencies spent in responding to the incident.

Rural Prosecution Unit

The unit traveled quite extensively to Bethel during the month. AAG Regan Williams conducted a two week trial in which he successfully prosecuted a repeat offender for sexually abusing a child.

During the last week of the month, AAG Dwayne McConnell traveled to Barrow for a sexual abuse sentencing.

Inmates William Wassillie and Raymond Tinker were sentenced to 20 years flat time for their roles in an assault upon another inmate at the Yukon Kuskokwim Correctional Center. The witnesses were all inmates and several of them participated in the incident, but had to be immunized to prosecute the leaders of the assault.

Walter Sipary was sentenced to five years with three years suspended for a felony domestic violence assault in which he broke his wife's nose.

Egan Tommy was finally sentenced for murder in the second degree involving the shooting death of a Newtok elder. He had remained at API on competency issues for close to a year. He received a sentence of 45 years with 20 years suspended.

[SAVE THE DATE](#)

Conference of Western Attorneys General
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Seattle, WA – August 3-6, 2008